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State v. Allen Respondent's Brief Dckt. 43040

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LAWRENCE G. WASDEN
Attorney General
State of Idaho
P.O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534

PAUL R. PANTHER
Deputy Attorney General
Chief, Criminal Law Division

LORI A. FLEMING
Deputy Attorney General

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 43040
Plaintiff-Respondent,)	
)	Latah County Case No.
v.)	CR-2014-441
)	
JACINDA RAE ALLEN,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Allen failed to establish that the district court abused its discretion by relinquishing jurisdiction and executing her underlying unified sentence of five years, with two years fixed, imposed upon her guilty plea to possession of methamphetamine with the intent to deliver?

Allen Has Failed To Establish That The District Court Abused Its Sentencing Discretion

Allen pled guilty to possession of methamphetamine with the intent to deliver and the district court imposed a suspended unified sentence of five years, with two years fixed, and placed Allen on probation for three years with the special condition that she

enroll in and successfully complete the Latah County Drug Court program. (R., pp.124-33.)

Over the next two months, Allen continued to use illegal drugs and repeatedly failed to abide by the rules of Drug Court. (R., pp.136-54.) Allen's probation officer subsequently filed a Report of Probation Violation alleging Allen had failed to appear for a Drug Court session and absconded from supervision. (R., pp.156-57.) Allen admitted to violating her probation as alleged, and the district court revoked her probation and ordered her underlying sentence executed; however, it retained jurisdiction for 365 days. (R., pp.162-65.)

After a period of retained jurisdiction, the district court relinquished jurisdiction and ordered Allen's underlying sentence executed without reduction. (R., pp.170-73.) Allen timely appealed from the order relinquishing jurisdiction. (R., pp.177-80, 184-87.)

Allen asserts the district court abused its discretion when it relinquished jurisdiction in light of her "good progress" in some of her classes, her desire to change, her willingness to abide by the rules if given an opportunity to complete her rider, and her desire to move to California to be with her family. (Appellant's brief, pp.2-3.) The record supports the sentence imposed.

"Probation is a matter left to the sound discretion of the court." I.C. § 19-2601(4). The decision to relinquish jurisdiction is a matter within the sound discretion of the trial court and will not be overturned on appeal absent an abuse of that discretion. See State v. Hood, 102 Idaho 711, 712, 639 P.2d 9, 10 (1981); State v. Lee, 117 Idaho 203, 205-06, 786 P.2d 594, 596-97 (Ct. App. 1990). A court's decision to relinquish jurisdiction will not be deemed an abuse of discretion if the trial court has sufficient

information to determine that a suspended sentence and probation would be inappropriate under I.C. § 19-2521. State v. Chapel, 107 Idaho 193, 194, 687 P.2d 583, 584 (Ct. App. 1984).

Allen is not an appropriate candidate for probation. At the jurisdictional review hearing the district court articulated the correct legal standards applicable to its decision and also set forth in detail its reasons for relinquishing jurisdiction and executing Allen's sentence. (Tr., p.36, L.18 – p.39, L.15.) The state submits that Allen has failed to establish an abuse of discretion, for reasons more fully set forth in the attached excerpt of the jurisdictional review hearing transcript, which the state adopts as its argument on appeal. (Appendix A.)

Conclusion

The state respectfully requests this Court to affirm the district court's order relinquishing jurisdiction.

DATED this 2nd day of December, 2015.

/s/
LORI A. FLEMING
Deputy Attorney General

CATHERINE MINYARD
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 2nd day of December, 2015, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

MAYA P. WALDRON
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us.

/s/
LORI A. FLEMING
Deputy Attorney General

APPENDIX A

State of Idaho v. Jacinda Rae Allen

<p>1 THE DEFENDANT: Um, yeah, I kind of</p> <p>2 struggled at first. I mean, I -- I didn't read all the</p> <p>3 C-Notes because it -- it is too much to read. But, um,</p> <p>4 yeah, I was dealing with -- I'm not trying to make</p> <p>5 excuses, like -- I -- I did a lot of things wrong, but</p> <p>6 I think I did a lot of things right. And it just</p> <p>7 didn't work out for me this time.</p> <p>8 But, um, I know I can do it, sir. I know</p> <p>9 I'm my own worst enemy when it comes to things like</p> <p>10 that. Um, the Sergeant down there told me the same</p> <p>11 thing. She said, you know, you're one of the smartest</p> <p>12 people I've seen come in here, and you can do it if you</p> <p>13 want, but you are your own worst enemy. I think she's</p> <p>14 right.</p> <p>15 Um, I had to move on from one issue,</p> <p>16 addiction, in order to fully be able to focus on the</p> <p>17 heroin, which I'm ready to do.</p> <p>18 I have 5 months sober, which I've never had</p> <p>19 in -- since I was 15 years old. It feels nice. I</p> <p>20 think a lot more. I don't know if that's good or bad,</p> <p>21 but -- especially down in the hole but. Yes, sir, I</p> <p>22 mean, I'd like another chance, and I can do this.</p> <p>23 THE COURT: Thank you. Mr. Thompson, the</p> <p>24 State's argument with regard to disposition or to</p> <p>25 whether to retain, relinquish, or place Ms. Allen on</p>	33	<p>1 opportunity for a rider.</p> <p>2 You know, Judge, I -- our preference would</p> <p>3 have been for Ms. Allen to be successful on a rider.</p> <p>4 But not only was she unsuccessful in a repeated manner,</p> <p>5 um, despite numerous opportunities of intervention, uh,</p> <p>6 but she was unsuccessful in such a way that she was</p> <p>7 undermining and sabotaging other people who were really</p> <p>8 trying to benefit from their riders. To return her to</p> <p>9 that program, we submit, would be a mistake.</p> <p>10 She is much more suited for the prolonged</p> <p>11 sobriety and intervention of the Court, relinquishing</p> <p>12 jurisdiction, and let her access the full-length</p> <p>13 programming available for people who are timers, uh,</p> <p>14 and let her then access, uh, the opportunity for</p> <p>15 parole, uh, and hopefully put her plan together to</p> <p>16 parole successfully and go to California.</p> <p>17 Another thing, as a practical matter,</p> <p>18 Your Honor. If she were to be placed on probation, she</p> <p>19 would not be able to receive permission to compact to</p> <p>20 California, uh, because Latah County is not in a</p> <p>21 position to guarantee extradition from California, and</p> <p>22 the Department of Correction requires that in order to</p> <p>23 approve the compact.</p> <p>24 Uh, so if her long term goal is to compact</p> <p>25 her supervision to California, and that's the best, uh,</p>	35
<p>1 probation?</p> <p>2 MR. THOMPSON: Thank, your Honor. Um,</p> <p>3 looking at the entirety of Ms. Allen's behavior and her</p> <p>4 history, the State thinks that the recommendation from</p> <p>5 the Department of Corrections is the best one.</p> <p>6 Um, there -- nobody is going to say that</p> <p>7 Ms. Allen hasn't made some progress, but she hasn't</p> <p>8 made progress anywhere to the degree that would be</p> <p>9 expected, um, of somebody in her situation. And the</p> <p>10 effect of her misbehavior, and continuing misbehavior,</p> <p>11 goes beyond her.</p> <p>12 Um, repeatedly in the report, um, the staff</p> <p>13 comment about how Ms. Allen was disrupting the progress</p> <p>14 and the treatment and the recovery for the other people</p> <p>15 who were actually trying to make their programs work,</p> <p>16 and that's not fair to those other people.</p> <p>17 Ms. Allen says in her letter to the Court</p> <p>18 that, uh, the time came for the behavioral contract and</p> <p>19 that, uh, I woke up. It was like one day after I woke</p> <p>20 up, uh, it hit me like a ton of bricks.</p> <p>21 Well, if we look at the C-Notes, whatever</p> <p>22 hit her didn't substantially change her behavior. And</p> <p>23 her letter comes to the Court pretty much after she's</p> <p>24 already here and she knows she's got to do something</p> <p>25 because the reality has set in that she's blown her</p>	34	<p>1 environment for her, the only way that goal can be</p> <p>2 realized is for her to be paroled. Because in the</p> <p>3 State of Idaho, uh, we'll use their parole/extradition</p> <p>4 pot of money, uh, to cover -- uh, to cover the costs of</p> <p>5 that, and there would not be an impediment to it.</p> <p>6 So for a variety of reasons, Your Honor, the</p> <p>7 State's recommendation is that the Court follows the</p> <p>8 recommendation of the Department of Correction and</p> <p>9 relinquish jurisdiction.</p> <p>10 THE COURT: Thank you, Mr. Thompson.</p> <p>11 Ms. Mabbutt, anything in response?</p> <p>12 MS. MABBUTT: No, Your Honor.</p> <p>13 THE COURT: Does the defendant have any</p> <p>14 cause to show why I should not either place her on</p> <p>15 probation, relinquish jurisdiction, or retain</p> <p>16 jurisdiction over her at this time?</p> <p>17 MS. MABBUTT: No, Your Honor.</p> <p>18 THE COURT: So, um, I've been doing this a</p> <p>19 long time, Ms. Allen, and I think this was a singularly</p> <p>20 bad report. Uh, I don't remember receiving one that,</p> <p>21 uh, was worse.</p> <p>22 Um, I realize you couldn't read all of the</p> <p>23 C-Notes, but I'm going to read some of the things to</p> <p>24 you to try to explain why I'm doing what I'm doing.</p> <p>25 On, uh, January 20, 2015 -- this is just</p>	36

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<p>1 last week -- "Ms. Allen continually tests the 2 boundaries of this facility. She's not focusing on the 3 program, but spends her time on relationship-building 4 with other offenders. She has general disregard for 5 the rules and acts like an unruly, but intelligent, 6 teenager that tests the boundaries of their parents. 7 Her antisocial, anti-authority behavior was a 8 disruption to the facility. 9 She does not appreciate the opportunity she 10 has been given by the Court and does not want to change 11 her behavior, but tries to manipulate at any given time 12 and plays the victim whenever possible. She's been 13 counseled on her behavior and succeeding in the 14 program, but friends and relationships take precedence. 15 She doesn't show the motivation for any 16 changes, only trying to deny all the distractions that 17 she's engaged in. After being placed on a behavior 18 contract she still continued to test the boundaries. 19 She was giving massages when she should have been 20 tutoring." 21 On page 5 of the report, um, it echoes many 22 of the things just written. Um, "Ms. Allen was a 23 significant disciplinary problem. Did not complete 24 assigned programs and did not submit a reasonable 25 probation plan with a confirmed living arrangement.</p>	37	<p>1 parents is a very apt analogy. 2 You're going to have to get over it. You're 3 going to have to get over yourself. You're going to 4 have to recognize that you are the master of the -- of 5 your fate, and you are the captain of your soul. And, 6 uh, if you want it to be spent outside the bars of the 7 prison system, you're going to have to change. 8 I am also recommending that you participate 9 in the therapeutic community. There's a therapeutic 10 community in both, um, the period of retained 11 jurisdiction and the term population. It's a longer 12 term in the term population, but I think you need it 13 just as badly as when I recommended that you 14 participate in the therapeutic community in the rider 15 program. Good luck. 16 THE DEFENDANT: Thank you, sir. 17 THE COURT: Uh, You have the ability to 18 appeal this decision. If you cannot afford counsel, 19 one can and will be appointed for you in the bringing 20 of that appeal. Is there anything else we need to take 21 up? 22 MR. THOMPSON: Not from the State. Thank 23 you, sir. 24 MS. MABBUTT: No, Your Honor. 25 THE COURT: We are in recess. Good luck,</p>	39
<p>1 Her efforts in the program did not appear to 2 be sincere regarding her willingness to change her 3 criminal thinking and behavior. 4 She does not demonstrate, at this time, the 5 ability to follow probation stipulations and 6 recommendations." 7 Um, I -- I like you, too. Um, I'm, uh, 8 disappointed and disheartened that this was your 9 behavior and performance. Um, I would have enjoyed 10 seeing you come back and having learned something and 11 been able to be placed on probation. 12 But as Mr. Thompson correctly points out, 13 you were impeding others in their success. And that's 14 something I really can't countenance. If it were just 15 you, and I thought another period of retained 16 jurisdiction might work, that would be one thing, but I 17 think you have been deleterious to those around you in 18 the program, and for that, I think I can't take another 19 chance. 20 So I am relinquishing jurisdiction. I am 21 ordering that the sentence that was previously imposed 22 be served. 23 I still like you, Ms. Allen. I wish you 24 well. I, um -- I think the analogy to an intelligent 25 teenager who questions all the boundaries of her</p>	38	<p>1 Ms. Allen. 2 THE DEFENDANT: Thank you, sir. 3 (COURT RECESSED AT 3:31 P.M., 4 Wednesday, January 28, 2015) 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	40